

LAW OFFICES
HENRY E. CRAWFORD
SUITE 900
1150 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
202-862-4395

E-Mail: crawlaw@wizard.net
Web: <http://www.wizard.net/~crawlaw>

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July 16, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re:

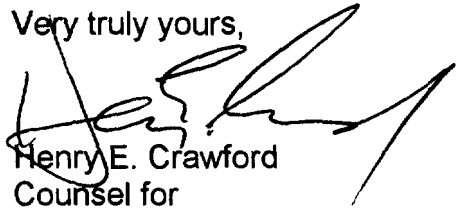
In the Matter of Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Llano and Marble Falls, Texas) MM Docket No. 95-49; RM-8558

Dear Mr. Caton:

Transmitted herewith on behalf of Roy E. Henderson are an original and four (4) copies of a "Motion to Strike Late Filed Pleading" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,


Henry E. Crawford
Counsel for
Roy E. Henderson

cc: The Chief, Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Llano and Marble Falls, Texas)

MM Docket No. 95-49
RM-8558

To: The Chief, Allocations Branch

MOTION TO STRIKE LATE FILED PLEADING

Roy E. Henderson ("Henderson"), by counsel respectfully submits its *Motion to Strike Late Filed Pleading* in response to the *Opposition to Motion for Stay* ("Opposition") filed on July 14, 1997, by Maxagrid Broadcasting Corporation ("Maxagrid"). In support thereof, the following is stated:

I. ARGUMENT

A. The Maxagrid Opposition Was Filed One Week Late

1. On June 30, 1997, Henderson, along with Tichenor License Corporation ("Tichenor"), filed a *Motion for Stay of Proceedings*. Section 1.45(d) of the Commission's Rules provides for a seven day period within which to file an opposition to a stay motion. Since the filing period is not less than seven days, intervening weekends and holidays must be taken into account in performing this calculation. 47 CFR §1.4(g). Moreover, in the case of a stay motion, no additional time is allowed for service by mail, i.e., the provisions of Section 1.4(h) of the Commission's rules are not applicable. 47 CFR §1.45(d).

2. Taking these provisions together, the time for responding to the Motion for Stay of Proceedings expired on July 7, 1997. Maxagrid filed its Opposition on July 14, 1997; a full week after the deadline had run.

3. Maxagrid makes no showing why its late pleading should be accepted. Its lateness is not even acknowledged. Under these circumstances, the Opposition cannot be accepted for any purpose by the Commission and must be summarily dismissed.

B. The Stay Motion Is Unopposed

4. Given the gross tardiness of the Opposition, the Commission cannot substantively consider the pleading. As it turns out, in what is presumably meant to be a gesture of understatement, the Opposition consists of a single paragraph containing two sentences. Maxagrid attached to this minimalist pleading a brief filed by the Commission in a court of appeals case over a decade ago. That was ten years before the automatic stay provision under consideration in the present case was deleted from the Commission's Rules. See, Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders, 11 FCC Rcd 9501 (1996) ("Automatic Stays of Certain Allotment Orders").

5. Maxagrid does not discuss the facts underlying this rulemaking proceeding. It does not dispute a single factual or legal contention made in the stay motion. By its silence, Maxagrid essentially concedes the issue of irreparable harm. Similarly, having failed to make any cognizable argument to the contrary, Maxagrid must be understood as conceding the central fact that Henderson and Tichenor are likely to win on the merits of the case.

II. CONCLUSION

6. The pleading cycle on the stay motion is now complete. All of the legal and factual positions asserted in the stay motion remain undisturbed. Maxagrid has disregarded Section 1.45(d) of the Commission's Rules and failed to contest any of the sound reasons for granting a stay presented in the stay motion. In Automatic Stays of Certain Allotment Orders, the Commission noted that it would be particularly cognizant of stay requests in certain circumstances.¹ There could be no more appropriate situation for granting a stay request than where, as here, it is essentially unopposed. Therefore, the Opposition should be dismissed summarily and the stay of proceedings requested by Henderson and Tichenor granted.

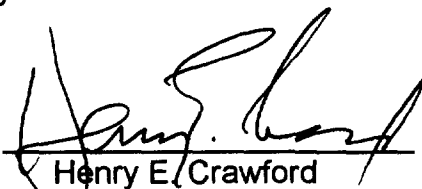
WHEREFORE, it is respectfully requested that the Opposition to Motion for Stay be summarily dismissed.

July 16, 1997

Law Offices of
Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 862-4395
E-Mail: crawlaw@wizard.net
Web: <http://www.wizard.net/~crawlaw>

Respectfully Submitted,

Roy E. Henderson

By: 
Henry E. Crawford
His Attorney

¹ Automatic Stays of Certain Allotment Orders, 11 FCC Rcd 9501, 9505-9506.

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Motion to Strike Late Filed Pleading have been served by United States mail, postage prepaid this 16th day of July, 1997 upon the following:

*John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications
Commission
2025 M Street, N.W.
Washington, D.C. 20554

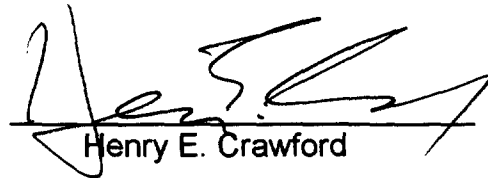
*Ms. Pam Blumenthal
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications
Commission
2025 M Street, N.W.
Washington, D.C. 20554

John J. McVeigh, Esq.
Bernstein & McVeigh
1818 N Street Northwest
Suite 700
Washington, D.C. 20036
Counsel for
Maxagrid Broadcasting
Corporation

Robert J. Miller, Esq.
Gardere & Wynne, L.L.P.
1601 Elm Street
Suite 3000
Dallas, Texas 75201
Counsel for
Kirkman Group, Inc.

Roy R. Russo, Esq.
Cohn & Marks
1333 New Hampshire Avenue, NW
Suite 600
Washington DC 20036-1573
Counsel for
Tichenor License Corporation

*Hand Delivered


Henry E. Crawford